



Special Education Advisory Committee

Prior Notice and Parent (Guardian) Consent

Abridged Report,¹ Finding, and Recommendations

October 11, 2020

Prepared For:
SEAC Membership
Special Education Community
Loudoun County School Board

For more information and supporting documents, please see SEAC's issue page:
[http://loudounseac.org/wiki/Prior_Notice_and_Parent_\(Guardian\)_Consent](http://loudounseac.org/wiki/Prior_Notice_and_Parent_(Guardian)_Consent)

¹This document is a brief report of the current SEAC recommendation on this policy. It does not, and is not intended to, fully capture the history and background of the issue. A full report is available upon request.

Summary of Recommendations

Finding 1: SEAC finds that the IEP Prior Notice and Parent (or Guardian) Consent statement, the Least Restrictive Environment qualifying statements, and the Temporary Distance Learning Plans, do not meet the needs of students with disabilities.

A recent pattern of LCPS changes to IEPs have lacked transparency, including bypassing the School Board and its Student Support and Services (SSS) committee, SEAC, community input, and public review.

Temporary Distance Learning Plans (TDLPs) did not meet the needs of our Special Education students, failed to provide educational benefit, and further damaged trust with the SPED community.

LCPS staff added language to IEPs' Least Restrictive Environment (LRE) page, and later to the consent page, that was not created by the IEP team and was not based on the individual needs of students. SEAC has received many reports that parent concerns and requests to change or remove the language from the proposed IEPs were refused.

The Prior Notice and Parent (or Guardian) Consent statement appears to be intended to circumvent the existing school board Policy 5310.

Recommendation 1: SEAC recommends that all such statements be removed with no further attempts to use such statements, and that LCPS follow guidance from the U.S. Department of Education's Office of Special Education Programs and Rehabilitative Services (OSERS) and the Virginia Department of Education (VDOE) on how to address the current circumstances while complying with the IDEA.

Rationale:

These and other LCPS staff actions have deepened divisions and mistrust at a time when we need more collaboration between parents/guardians and schools in order to achieve educational success.

LCPS should focus their efforts on creative solutions and a continuum of options to educate our students with special education needs.

SEAC has received reports that LCPS staff have been delaying parent requests for IEP meetings and failing to meet LCPS's timeliness obligations under the IDEA.

SEAC has received reports that LCPS staff have been limiting what can be discussed during IEP meetings. This may not comply with LCPS's obligations under the IDEA.

LCPS staff have repeatedly stated that IEP meetings are not intended to be burdensome (March 2019 SEAC meeting). These actions appear to be various attempts to allow the LCPS staff to make major reductions or eliminations of IEP services while entirely bypassing the meaningful parental participation that is LCPS's obligation under the IDEA. None of these LCPS staff provisions are about providing students with more educational support.

The U.S. Department of Education considered waivers to the IDEA's requirements and ultimately decided they were not necessary. Instead, they and the VDOE have issued guidance on how to meet the IDEA's obligations given the current circumstances. The IDEA and DoE interpretations and guidance have numerous provisions that provide the needed flexibility for parents/guardians and schools to work together during this time.

LCPS staff should afford IEP teams more flexibility to meet individual students' educational needs.

Recommendation 2: SEAC recommends that the LCPS IEP signature page follow the VDOE Sample IEP Form's Prior Notice and Parent Consent page.

Rationale:

SEAC also reviewed the language of LCPS's previous Parent (or Guardian) Statement and had concerns with the previous language when considered in light of current information and circumstances. SEAC recommends instead using the VDOE's recommended language.

The VDOE Sample IEP Form's Prior Notice and Consent language is simple and straightforward, meets IDEA requirements, and is a "safe harbor" choice of consent language for LCPS.

VDOE Sample Language:

"The school division proposes to implement this IEP. This proposed IEP will allow the student to receive a free appropriate public education in the least restrictive environment. This decision is based upon a review of current records, current assessments and the student's performance as documented in the Present Level of Academic Achievement and Functional Performance. Other options considered, if any, and the reason(s) for rejection are attached or can be found in the Placement Decision section of this IEP. Additionally, other factors, if any that are relevant to this proposal are attached. Parent and adult student rights are explained in the Procedural Safeguards. If you, the parent(s) and adult student, need another copy of the Procedural Safeguards or need assistance in understanding this information please contact

_____ at (____) _____ or e-mail

_____ or

_____ at (____) _____ or e-mail

_____ .

____ Parent(s) initials here indicate that the parent(s) has read the above prior notice and attachments, if any, before giving permission to implement this IEP.

PARENT/ADULT STUDENT CONSENT: Indicate your response by checking the appropriate space and sign below.

___ I give permission to implement this IEP.

___ I do not give permission to implement this IEP."

1. Abridged Issue Background and History

In spring of 2020, LCPS staff sent a letter to Special Education parents, signed by the Special Education leadership team rather than being signed by a specific person. This letter began with a statement that LCPS will not be implementing IEPs. It continued with a statement that LCPS staff will create a “Temporary Distance Learning Plan” (TDLP), a document not created by an IEP team, and that if parents do not consent to the TDLP, they will receive no special education services.

On April 12, 2020, SEAC sent a letter of concerns to Dr. Nelson, Special Education Director. SEAC is not able to give legal opinions or advice. A lay understanding of the IDEA, Section 504 of the Rehabilitation Act, and the ADA, makes us concerned that the LCPS staff’s actions might have been massive, systemic violations of both their formal legal obligations and the spirit of those laws and the school board’s public claims of commitment to educational equity. There is speculation that the LCPS staff assumed that their obligations under the IDEA and 504/ADA would be waived, which did not happen.

SEAC has received reports that, during this time, some parents/guardians rejected the TDLPs and instead requested IEP meetings as is their right under the IDEA. SEAC has received reports of a spectrum of responses and outcomes. There are reports that students ultimately received IEPs developed by the IEP team that contained significantly more support than the original LCPS staff offered TDLP. There are also reports that LCPS staff retaliated against parents/guardians by delaying IEP meetings so that those students received no services at all (and thus, no education).

Near the end of the 2019-2020 school year, SEAC began receiving reports that LCPS staff were adding a legal statement to the end of the Least Restrictive Environment (LRE) page of students’ IEP offers. These statements vary between families. One such statement reads:

“These IEP services will be available to student on his assigned school days at his assigned school during the regular school year, provided student is permitted and is able to attend school in-person. Despite any other statement in the IEP to the contrary, the IEP will not be implemented, and the school division has no obligation to make-up any missed services, on days when the student’s assigned school does not hold in-person classes for any reason, such as inclement weather, health limitations and emergencies, holidays, partial days, partial weeks, and teacher planning days. The IEP services will also not be provided during the summer period unless services are specified for the student in the Extended School Year section of the IEP. In the event student’s school is closed due to a declared emergency or health crisis for an extended period of time that exceeds two full school weeks, the school division will contact the parents to consider the appropriateness of alternative services, including distance learning options during the period of closure. The original IEP will be implemented upon the reopening of school and the ability of student to attend.”

Again, SEAC is not able to give legal opinion or advise. A lay understanding of the IDEA, Section 504, and the ADA, makes us concerned that this language is explicitly intended to require that parents/guardians diminish or waive their legal rights, or is intended to create an appearance or doubt about legal rights, that were established under the IDEA and 504 to protect against discrimination and ensure that students with disabilities receive an education. We are concerned that these terms might be systemic violations of formal legal obligations, the spirit of those laws, and the school board’s public claims of commitment to educational equity.

SEAC has received reports that parents/guardians questioned this language being inserted into their students’ IEPs. Parents received various explanations that were differing and did not appear to be fully truthful, but it was consistently reported that LCPS staff refused to modify or remove these statements. These were not individualized based on the needs of the student, rather, they were dictated by LCPS staff and presented to parents/guardians as an ultimatum.

In May 2020, LCPS staff proposed to revise school board Policy 5310 to permit them to make IEP amendments without an IEP meeting. Staff’s public claims were that this would “streamline” the process

and make it more “flexible,” and that they needed this in order to transition students between distance, hybrid, and in-person learning without the burden of having to hold 8,000 IEP meetings.

LCPS staff’s legal maneuvering might have been counter-productive. During the summer, the school board voted to begin the 2020-2021 school year with 100% distance learning. The LCPS staff’s LRE statement language effectively invalidated every IEP that contained it because it stated that services would only be provided in-person.

Near the end of the summer, SEAC began receiving reports that LCPS staff were adding a five-paragraph legal statement to the Parent (or Guardian) Statement page of students’ IEP offers. The statement reads:

“The services described in this IEP are designated for implementation in a school and/or remote location. The IEP services designated for implementation in a specific location will be available to the Student on the days the Student is administratively assigned by the school division to that location during the regular school year. The assignment of the Student to a location for IEP implementation may vary during the course of the school year based on the ability of the school division to offer services in the particular location. If, during the school year, the School Board, as a result of a health emergency or other concerns, changes the number of days per week that the Student is assigned to attend instruction at school, then the IEP services designated for delivery in a school location will be adjusted to align with the number of days that the Student is assigned to attend instruction at school.

As an example, if the School Board increases the number of days per week that the Student is assigned to attend school, then the IEP services designated for delivery in school will increase proportionately, and conversely the IEP services designated for remote instruction will decrease proportionately. The opposite situation may also occur if the School Board decreases the number of days per week that the Student is assigned to attend school.

Despite any other statement in the IEP to the contrary, the IEP services will not be implemented, and the school division has no obligation to make-up any missed services, on days when the school division does not offer instruction, whether virtually or in-person, for reasons such as inclement weather, pandemics, health emergencies, the student illness[sic], the student’s inability to participate for safety or health reasons, holidays, partial days, partial weeks, and teacher planning days. The IEP services will also not be provided during the summer months unless services are specified for the Student in the Extended School Year section of the IEP.

By signing and granting consent to this IEP, the parent(s)/guardian(s) grant consent for the adjustment of IEP services between the school and remote locations based on the School Board’s: assignment of the Student to a location for IEP implementation; the School Board’s decision to open and close school buildings or classrooms; and/or the availability of specific services at a particular location. The parent(s)/guardian(s) are further granting consent to adjusting the means of delivery of instruction (in-person vs. telephonically or virtually), without holding an IEP meeting before implementing such a change in instructional platform. Nothing prevents the parent(s)/adult student or school staff from requesting an IEP meeting to discuss amendments/revisions to the IEP.

The school division proposes to implement this IEP. This proposed IEP will allow the student to receive free appropriate public education in the least restrictive environment. This decision is based upon a review of current records, current assessments, and the student’s performance as documented in the Present Level of Academic Achievement and Functional Performance. Other options considered, if any, and the reason(s) for rejection are attached or can be found in the Least Restrictive Environment section of this IEP. Additionally, other factors, if any, that are relevant to this proposal are attached. Parent and adult student rights are explained in the Procedural Safeguards. If you, the parent(s) and adult student, need another copy of the Procedural Safeguards or need assistance in understanding this information, please contact the Office of Special Education at 571-252-1011.”

At the September 9, 2020 SEAC meeting, three public commenter's and the SEAC Chair expressed their concerns with this statement. In response, Dr. Nelson publicly spoke and addressed the issue. She claimed

that this statement was not asking parents to waive their rights and is intended to provide parents with information. She also claimed that LCPS staff had already revised this statement and would no longer be using it.

SEAC has received reports that this statement continues to be used as of the writing of this document. It is unclear why there is a disconnect between LCPS staff's public claims and what is actually happening.

At a recent school board meeting, Atoosa Reaser, Vice Chair, Algonkian District expressed her concern about this statement based on multiple constituents' feedback, and requested that the issue be reviewed by the school board's Student Support Services (SSS) Committee.

Based on public comments at the previous SEAC meeting and the SSS committee's upcoming review, the SEAC Policy Subcommittee reviewed this issue and SEAC reviewed the issue and voted on this finding and these recommendations at its October 10, 2020 meeting.

2. Concerns

Concern 1: The worldwide COVID-19 pandemic has highlighted and exacerbated many systemic disability related inequities within LCPS. Special Education students continue to be marginalized. The lack of accessibility and the inability to meet the individual needs of students with disabilities has significantly impacted our Special Education students, families, and caregivers.

SEAC and the school board have received many reports that many Special Education students have not received an education since March, that many of those students have significantly regressed and continue to do so, that parents/guardians are having to do extraordinary amounts of work to try to get their students any access to an education.

SEAC has received many reports of LCPS staff educating non-disabled students and leaving disabled students behind to falter.

SEAC has received many reports of LCPS staff proposing massive cuts to Special Education supports for disabled students at a time when most special education students likely require more support than ever in order to receive an education.

Concern 2: SEAC has received many reports of LCPS efforts to severely cut students' educational supports. Parents should not be pressured or requested to waive their rights under the Individuals with Disabilities Education Act (IDEA) or Section 504 of the Rehabilitation Act. These rights have been put into law to protect students with disabilities because there is a long history of discrimination.

A plain reading of these legal terms is that they are intended to only reduce, not increase, educational supports for Special Education students, they are intended to circumvent procedural obligations under the IDEA that are a key check on detrimental school actions.

In *Hendrick Hudson School District v. Rowley*, the Supreme Court of the United States stated, "We think that the congressional emphasis upon full participation of concerned parties throughout the development of the IEP, as well as the requirements that state and local plans be submitted to the Commissioner for approval, demonstrate the legislative conviction that adequate compliance with the procedures prescribed would in most cases assure much if not all of what Congress wished in the way of substantive content in an IEP." The rights that LCPS staff appear to be attempting to circumvent exist to facilitate development of an educational program that meets the needs of the disabled student. Violations of procedural rights leads to substantive violations of the right to an education; intent to violate one is intent to violate both.

The fourth paragraph of the parent statement explicitly states that the parent consents to this, which calls into question the truthfulness of LCPS staff's public statements that they are not asking parents to consent to any waiver of their legal rights and that these statements are only a clarification.

Concern 3: The current school board has repeatedly stated their support for educational equity. Recent actions by LCPS staff appear to be opposed to the school board's position.

Serving over 11% of the student population, Special Education is LCPS's biggest equity program. LCPS staff actions appear to be intended, and have the effect, of significantly reducing educational equity supports to Special Education students. Instead of expending effort to ensure that all students receive the supports they need in order to receive an education, LCPS staff are using legal statements and bullying actions in what appears to be a series of attempts to dismantle equity supports and avoid accountability.